IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 1087

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, *et al., Petitioners,*

v.

DONNELLY GARMENT COMPANY, a Corporation; DONNELLY GARMENT SALES COMPANY, a Corporation; DONNELLY GARMENT WORKERS' UNION, *et al.*, and CENTRAL SURETY AND INSURANCE COMPANY

REPLY MEMORANDUM FOR THE PETITIONER

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REPLY MEMORANDUM FOR THE PETITIONER

Although we are reluctant to impose a further Memorandum upon the Court, we believe that there are a few matters in the respondents' and interveners' brief in opposition which require comment.

I

(Petition, pp. 15-17).
(Brief in Opposition, pp. 15-17).

In our petition we relied on the well-settled rule that a statutory bond, and the mandatory statute which requires it, are to be read *in pari materia.* The court

below accepted the rule (R. 587), but, for reasons the invalidity of which we have reviewed in the petition (pp. 15-17), refused to apply it in this case. Respondents now, however, appear to challenge this rule, and to assert that even where a mandatory statute is involved, the bond, and not the statute, governs.

The cases which they cite for that position, however, wholly fail to support it. In none of those cited at p. 15 of the Brief in Opposition is there any indication of a conflict with the general rule. *Houghton* v. *Meyer*, 208 U. S. 149, involved a permissive statute, not a mandatory one; the court had full discretion as to the terms of the bond, and its determination was, therefore, of course controlling. *Lawrence* v. *St. Louis-San Francisco Ry. Co.*, 278 U. S. 228, makes no reference to any statute; although decided subsequent to the passage of Section 382 of the Clayton Act, that section is not referred to in the opinion, nor in the briefs in this Court, which we have examined. *Minneapolis, etc., Ry. Co.* v. *Washburn Lignite Coal Co.*, 254 U. S. 370, came up from a state court, and no mandatory statute was involved. And in *Meyers* v. *Block*, 120 U. S. 206; *Russell* v. *Farley*, 105 U. S. 433; and *Bein* v. *Heath*, 12 How. 168, there were no statutes involved at all.

The same comment is applicable to the cases cited by respondents for the proposition that the terms of the bonds control over the provisions of Section 382 of the Clayton Act (p. 16). In *not one of those cases* was Section 382 cited. *Lawrence* v. *St. Louis-San Francisco Ry. Co.* we have already noted above. The same absence of any reference to Section 382 is also true of *Berger Mfg. Co.* v. *Huggins*, 242 Fed. 853 (C. C. A. 8th); *United Motor Service, Inc.* v. *Tropic-Aire, Inc.*, 57 F. (2d) 479 (C. C. A. 8th); *Tenth Ward Road Dis-*

trict v. *Texas & Pacific Ry. Co.*, 12 F. (2d) 245 (C. C. A. 5th); and *Becker* v. *Stander*, 17 F. (2d) 772 (E. D. La.).

The petition, however, cited (p. 15) a case in which Section 382 *was* involved and discussed, and in which the *in pari materia* rule *was* applied, *Heiser* v. *Woodruff*, 128 F. (2d) 178 (C. C. A. 10th). Since respondents now assert (p. 17) that the *Heiser* case is squarely opposed to our position, it may be well to state the facts, which show that the terms of the *bond* must yield to the terms of the mandatory *statute*. There a temporary injunction had issued, and a bond had been furnished conditioned "for payment of any damages which might be sustained by reason of the wrongful issuance of such injunction, *including reasonable attorneys fees*". After the temporary injunction had been dissolved, the trial court in assessing defendant's damages awarded a judgment for $1,518.42, of which $1500 was for attorneys fees. The Circuit Court of Appeals reversed, holding that despite the language of the bond, Section 382 prevented recovery since such fees were not an element of "damages" under that section. The *statute*, not the bond, controlled. The case is fully consistent with, and fully supports, our position, and by the same token, is diametrically opposed to the respondents oft repeated view that "liability is dependent upon the bond actually filed". As the *Heiser* case shows, that simply is not true under a mandatory statute.

II

(Petition, p. 19).
(Brief in Opposition, pp. 22-23).

In our petition we urged that, apart from the bonds, recovery should be allowed on the *undertaking* required

of the plaintiffs and interveners by Section 7. The court below denied the claim by refusing to distinguish between the statutory "undertaking" and the "adequate security". Respondents now suggest that the decision below can be supported by construing "an undertaking with adequate *security*" as if it had said "an undertaking with adequate *surety*". Unfortunately for the argument, Section 7 uses the word "surety" several times, when it wishes to refer to the surety. Certainly it is highly unlikely that Congress would also in the same section use the unusual phrase "adequate security" to refer to a surety. "Adequate security" means just what it says, a bond, or possibly a cash deposit. That is what is fixed by the court; the undertaking is imposed by the statute itself.

III

(Petition, pp. 21-22).
(Brief in Opposition, pp. 25-26).

Defendants urge that the issue in this case will no longer arise because the issue of what constitutes a "labor dispute" has now been settled. There are two answers. First, while many types of controversies are now clearly within the statute which were, at first, in doubt, it does not follow that the shadow line has been eliminated. Close cases will continue to arise even though the wide ambit of the statute is now generally accepted. And, as the petition points out (p. 20 n.), it is in just such cases that the protection of Section 7 is most necessary.

The second answer is furnished by the instant case. Even after the Norris-LaGuardia Act was held applicable in this case, the court nevertheless failed to follow the full mandate of Section 7 of the Act in exact-

ing the $25,000 bond (See Pet., p. 9). The issue may arise, in other words, even where the Act is found applicable.*

Respectfully submitted,

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April 19, 1945.

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* It should be noted that the statement of the first "Question Presented" in the Brief in Opposition (p. 2) assumes one fact which is definitely in issue—that the third ($25,000) bond was issued under Rule 74 (See Pet., Specification of Errors, No. 3, p. 13). Defendants contend that it was issued under Section 7, not only because the Norris-La Guardia Act has then been held applicable, but also because Rule 74 itself does not in terms apply at all. Moreover, the identity of phrasing between the bond and Section 7 indicates that it was used as a model; indeed, attorneys fees, which were included in that bond, are required only by Section 7, and not by Rule 74. With respect to that bond, therefore, we believe that all of respondent's arguments fail completely. It was exacted under Section 7, and should be construed as including all of the provisions required by that section.